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Supreme Court, U. S.
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71-1609

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
a public corporation,
Petitioner

vs.

KENNETH L. KARST, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal, State of California
Second Appellate District, Division Three

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Second Appellate District, Division Three

The Petitioner, The Regents of the University of California, a public corporation, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal, State of California, Second Appellate District, Division Three, entered in this proceeding on January 26, 1972.

OPINION BELOW

The opinion of the Court of Appeal, State of California, Second Appellate District, Division Three, not officially reported, is set forth as Appendix A to this Petition. No opinion was rendered by the California Supreme Court which denied a hearing without issuing an opinion. The trial court, the Superior Court of the State of California for the County of Los Angeles, issued two summary judgments in favor of Respondents filed on October 21 and October 24, 1969, copies of which are set forth, respectively, as Appendix B and Appendix C to this Petition.

JURISDICTION

The opinion and judgment of the California Court of Appeal, Second Appellate District, was entered on January 26, 1972. Thereafter, petitioner filed a timely petition for a hearing of the case by the Supreme Court of California which was denied on March 22, 1972. This petition for certiorari will be filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the University of California can exclude from its faculty members of the Communist Party by reason of their want of academic integrity and opposition to the principles of academic freedom.

STATEMENT OF THE CASE

Respondents brought this action suing as taxpayers seeking to have declared unconstitutional the policy of The Regents of the University of California (hereinafter the "Regents") which excludes members of the Communist Party from the University's faculty. (C.T. 2, 6.) The Superior Court for the County of Los Angeles entered summary judgments in favor of respondents declaring to be unconstitutional the policy of the Regents excluding members of the Communist Party from the University's faculty. (C.T. 169, 178; Appendices B and C to this Petition.)

The decision of the California Court of Appeal issued on January 26, 1972 (set forth as Appendix A to this Petition) affirmed the summary judgments. The unsigned majority opinion of the California Court of Appeal contains no discussion of the important constitutional issue presented in this case other than the conclusionary statement that:

> "It is manifest that the judgments are sustained by the reasoning of *Keyishian v. Board of Regents, supra*, 385 U.S. 589, *Elfbrandt v. Russell, supra*, 384 U.S. 11, and *Vogel v. County of Los Angeles, supra*, 68 Cal. 2d 18. This court as an intermediate court of appellate review is bound by that reasoning. Consequently, a plenary discussion in this opinion of the arguments made on behalf of the Regents would serve no purpose." (Appendix A, p. vii.)

Justice Allport dissented from the decision of the California Court of Appeal stating:

> "A plenary examination of the communist dogma, its objectives and the conduct of the Communist Party member in connection therewith while on the teaching faculty of the University pose potentially valid constitutional grounds for the exclusion of such a person from such a position . . . . I am unable to subscribe to the view that the resolutions herein were, as a matter of law, violative of the California or United States Constitutions. The position which the majority feels compelled to take herein suggests the need for an immediate reevaluation of the subject . . . ." (p. 10.)

Although the case was fully briefed before the California Supreme Court, that Court disposed of the case without opinion by a simple order denying a hearing.

REASONS FOR GRANTING THE WRIT

1. THE JUDGMENT BELOW DECIDES AN IMPORTANT FEDERAL CONSTITUTIONAL LAW QUESTION, NOT HERETOFORE DETERMINED BY THIS COURT, AND IN A WAY NOT IN ACCORDANCE WITH APPLICABLE DECISIONS OF THIS COURT

The California Court of Appeal erroneously concluded that it was constrained to hold unconstitutional the Regents' policy excluding members of the Communist Party from the University's faculty by reason of this Court's decisions in the cases of *Keyishian v. Board of Regents of New York* (1967) 385 U.S. 589, 17 L.Ed.2d 629 and *Elfbrandt v. Russell* (1966) 384 U.S. 11, 16 L.Ed.2d 321 and a decision of the California Supreme Court based upon those cases, *Vogel*

v. *County of Los Angeles* (1967) 68 Cal.2d 18, 434 P.2d 961. As discussed below, those cases involved an issue distinct from that presented in this case. Analogous decisions of this Court clearly indicate the constitutionality of the Regents' policy here in question which is fully justified by valid educational policy considerations.

On October 11, 1940, The Regents of the University of California adopted a resolution which remains in full force and effect that:

> "The Regents believe that the Communist Party . . . gives its first loyalty to a foreign political movement and, perhaps, to a foreign government; that by taking advantage of the idealism and inexperience of youth, and by exploiting the distress of underprivileged groups, it breeds suspicion and discord, and thus divides the democratic forces upon which the welfare of our country depends. They believe, therefore, that membership in the Communist Party is incompatible with membership in the faculty of a State University. Tolerance must not mean indifference to practices which contradict the spirit and the purposes of the way of life to which the University of California as an instrument of democracy is committed." (C.T. 172.)

This policy was reaffirmed by resolutions adopted by the Regents on June 24, 1949 (C.T. 173) and April 21, 1950 (C.T. 174). As is evident from a reading of these policy statements, they are based upon the consideration that "membership in the Communist Party is incompatible with objective teaching and with search for the truth." (C.T. 172.) As is sum-

marized in the ensuing portions of this Petition, this conclusion is fully supported by official determinations concerning the Communist Party, by the findings of leading educational associations and by the writings of distinguished scholars and educators who have studied the matter.

As noted above, the majority opinion of the California Court of Appeal contains no consideration whatsoever of the constitutional issue presented in this case other than the conclusionary statement that:

> "It is manifest that the judgments are sustained by the reasoning of *Keyishian v. Board of Regents, supra,* 385 U.S. 589, *Elfbrandt v. Russell, supra,* 384 U.S. 11, and *Vogel v. County of Los Angeles, supra,* 68 Cal.2d 18. This court as an intermediate court of appellate review is bound by that reasoning. Consequently, a plenary discussion in this opinion of the arguments made on behalf of the Regents would serve no purpose." (Appendix A, p. vii.)

Each of these cases, and others relied upon by respondents such as *Wieman v. Updegraff* (1952) 344 U.S. 183, 97 L.Ed. 216, and *United States v. Robel* (1967) 389 U.S. 258, 19 L.Ed.2d 508, involved only laws which denied public employment to persons who are members of the Communist Party or other subversive organizations *on the basis of the individual's presumed disloyalty or subversive activities.* None of these cases holds that a state university may not reasonably determine that persons who join and remain members of the Communist Party are disqualified from serving on its faculty *by reason of lack of academic in-*

tegrity or want of professional ethics. The distinction is a critical one. As stated by this Court in *Sweezy v. New Hampshire* (1957) 354 U.S. 234, 247-248, 1 L.Ed.2d 1311, 1323:

> "'There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy.'"

For that reason, this Court has held that there is not a "constitutionally adequate basis for exclusion" from public employment on the grounds of disloyalty of members of subversive organizations unless there is a showing of "a specific intent to further the unlawful aims of an organization." (*Keyishian v. Board of Regents of New York* (1967) 385 U.S. 589, 606, 17 L.Ed.2d 629, 642.)

Quite distinct considerations are presented as regards the Regents' policy excluding members of the Communist Party from the University's faculty. Any such disqualification contains no stain or stamp of disloyalty or subversion. Indeed, it is clear that the policy can have no such implication since, as the California Supreme Court held in *Tolman v. Underhill* (1952) 39 Cal.2d 708, 713, the loyalty of California state employees, including University of California personnel, is a matter which has been preempted by the Legislature.

The policy excluding members of the Communist Party from the University's faculty when applied in an individual case means no more and no less than

that the individual does not meet one of the academic qualifications for a faculty position. There can be no doubt that such a policy concerning qualifications for faculty is well within the "full powers of organization and government" with respect to the University vested in the Board of Regents by Article IX, Section 9 of the California Constitution. *Hamilton v. University of California* (1934) 293 U.S. 245, 255-257, 79 L.Ed. 343, 349; *Wall v. Board of Regents, U.C.* (1940) 38 Cal. App.2d 698, 102 P.2d 533.

The single most analogous authority to the issue presented in this case is *American Communications Asso. v. Douds* (1950) 339 U.S. 382, 94 L.Ed. 925. *Douds* held constitutional the then section 9(h) of the Labor-Management Relations Act requiring each officer of a union certified by the National Labor Relations Board to file an affidavit that he is not a member of the Communist Party. Holding that this law was justified by the public interest in preventing political strikes, this Court observed:

> "There can be no doubt that Congress may, under its constitutional power to regulate commerce among the several States, attempt to prevent political strikes and other kinds of direct action designed to burden and interrupt the free flow of commerce. We think it is clear, in addition, that the remedy provided by §9(h) bears [a] reasonable relation to the evil which the statute was designed to reach. Congress could rationally find that the Communist Party is not like other political parties in its utilization of positions of union leadership as means by which to bring about

strikes and other obstructions of commerce for purposes of political advantage, and that many persons who believe in overthrow of the Government by force and violence are also likely to resort to such tactics when, as officers, they formulate union policy." (339 U.S. at 390-391, 94 L.Ed. at 939.)

Or, as stated in the concurring opinion of Justice Frankfurter:

"It must suffice for me to say that the judgment of Congress that trade unions which are guided by officers who are committed by ties of membership to the Communist Party must forego the advantages of the Labor Management Relations Act is reasonably related to the accomplishment of the purposes which Congress constitutionally had a right to pursue. To deny that, as a matter of experience, that is a judgment which Congress may enforce even though it involves the indicated restrictions upon freedom would be to make naivete a requirement in judges." (339 U.S. at 418, 94 L.Ed. at 954.)

Just as Congress may determine that members of the Communist Party should be excluded from officer positions in NLRB certified labor unions because their obligations to the Communist Party involve an undue risk of instigating political strikes, so also the Regents may validly determine that members of the Communist Party are not qualified for the University's faculty because of their commitments to accept the Communist Party line in all areas thereby forsaking the free pursuit of truth and objective teaching.

As a postscript to the *Douds* case, it should be noted that in 1959 Congress repealed section 9(h) of the Labor-Management Relations Act (the statute involved in *Douds*) and replaced it with section 504 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §504) making it a criminal offense for one who is or recently has been a Communist Party member to be a union officer. This Court held section 504 to be an unconstitutional bill of attainder in *United States v. Brown* (1965) 381 U.S. 437, 14 L.Ed.2d 484. In so ruling, however, this Court was careful to distinguish, rather than to overrule, *Douds* (381 U.S. at 457-458, 14 L.Ed.2d at 496-497). In the recent and significant case of *Bryson v. United States* (1969) 396 U.S. 64, 24 L.Ed.2d 264, this Court expressly stated that *Douds* has not been overruled. In the *Bryson* case, this Court refused to set aside the conviction of a union officer who had filed a false non-Communist affidavit with the National Labor Relations Board (the affidavit required by former section 9(h)) and in so doing observed:

> "We do not decide whether §9(h)—now repealed for over 10 years—would today pass constitutional muster, or whether *Douds* would instead be reaffirmed." (396 U.S. at 68, 24 L.Ed.2d at 268.)

Also indicative of the validity of the Regents' policy of excluding members of the Communist Party from the University's faculty is the recent decision of this Court holding constitutional the draft card burning law (*United States v. O'Brien* (1968) 391 U.S. 367, 20 L.Ed.2d 672). *O'Brien,* announces the following

general rule for determining the constitutionality of government regulations, such as Petitioner's policy in this case, involving incidental restrictions on First Amendment freedoms:

> ". . . we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." (391 U.S. at 377, 20 L.Ed.2d at 680.)

Measured by these tests, it is apparent that the Regents' policy excluding members of the Communist Party from the University's faculty is valid, since:

1. The policy "is within the constitutional power of the Government" [i.e. the Regents], because faculty appointment policies clearly are within the scope of the Regents' constitutional authority pursuant to Article IX Section 9 of the California Constitution, granting to the Regents full powers of organization and government with respect to the University;

2. The policy "furthers an important or substantial governmental interest", which is reserving positions on the University's faculty for persons of academic integrity who are free to be impartial scholars and objective teachers;

3. "The governmental interest is unrelated to the suppression of free expression" because the policy is not in any way directed toward curbing freedom of

expression or association, but rather is based solely upon considerations of academic integrity; and

4. "The incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest", since the policy is narrowly drawn to apply only to membership in the Communist Party. And, as discussed herein, persons who join and remain members of the Communist Party assume, and by their continuing membership continue to reaffirm, commitments to accept the Party line in all areas, thereby sacrificing impartial scholarship and objective teaching.

The considerations supporting the Regents' policy excluding members of the Communist Party from the University's faculty are supported by the illuminating analysis of the Communist Party, U.S.A. and the obligations of its members contained in the concurring and dissenting opinion of Justice Jackson in *American Communications Asso. v. Douds* (1950) 339 U.S. 382, 422-435, 94 L.Ed. 925, 956-963. As regards the issue presented in this case, the following extracts are especially germane:

> "Membership in the Communist Party is totally different. The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. . . . Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded.

"Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party." (339 U.S. at 432, 94 L.Ed. at 961.)

And

"There is certainly sufficient evidence that all members owe allegience to every detail of the Communist Party program and have assumed a duty actively to help execute it. . . ." (339 U.S. at 433, 94 L.Ed. at 962.)

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2. THE DECISION BELOW UNDERMINES THE AUTHORITY OF UNIVERSITIES FOR MAINTAINING CONDITIONS PROMOTING ACADEMIC FREEDOM

This Court has been sensitive to the need to maintain conditions of academic freedom in this nation's universities. As stated in *Keyishian v. Board of Regents of New York* (1967) 385 U.S. 589, 603, 17 L.Ed. 2d 629, 640:

"Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment. . . ."

Or, as expressed in *Sweezy v. New Hampshire* (1957) 354 U.S. 234, 250, 1 L.Ed.2d 1311, 1324:

"The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and

> train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."

It is this very important interest of maintaining conditions of academic freedom which is served by the Regents' policy excluding members of the Communist Party from the University's faculty. The evidence is compelling that members of the Communist Party assume commitments to accept the party line in all areas at the price of surrender of intellectual integrity. Such commitments, and the abuse of educational trust which they require, are entirely inconsistent with basic principles of academic freedom. Because these commitments reflect lack of academic integrity, they disqualify the Communist Party member from serving on the University's faculty.

That members of the Communist Party are disqualified for reasons of professional ethics from serving on the University's faculty is evident from: (1) official determinations, (2) policies of leading educational associations, (3) the writings of eminent scholars and educators and (4) official statements of the Communist Party itself, all of which would be developed in the full briefing of this case. The basic import of these is reflected in the following examples:

The Association of American Universities, whose membership consists of the presidents of leading American Universities, in an official policy statement unanimously approved by its members calls for excluding members of the Communist Party from university faculties. In its publication, *The Rights and*

Responsibilities of Universities and Their Faculties, issued March 24, 1953, the Association states:

> "Appointment to a university position and retention after appointment require not only professional competence but involve the affirmative obligation of being diligent and loyal in citizenship. Above all, a scholar must have integrity and independence. This renders impossible adherence to such a regime as that of Russia and its satellites. No person who accepts or advocates such principles and methods has any place in a university. Since present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position."

The National Education Association in 1950 adopted as its policy the report of its Educational Policies Commission which concludes:

> "Members of the Communist Party of the United States should not be employed as teachers. Such membership, in the opinion of the Educational Policies Commission, involves adherence to doctrines and discipline completely inconsistent with the principles of freedom on which American education depends. Such membership, and the accompanying surrender of intellectual integrity render an individual unfit to discharge the duties of a teacher in this country . . . The whole spirit of free American education will be subverted unless teachers are free to think for themselves. It is because members of the Communist Party are required to surrender this right, as a consequence of becoming part of a movement characterized by conspiracy and deceit, that they should

be excluded from employment as teachers." (Reprinted in pamphlet, *Permit Communist-Conspirators to be Teachers?* United States Government Printing Office, Washington, 1953, House Document No. 213, 83rd Congress, 1st Session, page 16.)

Dr. Sidney Hook, distinguished philosopher, educator and Chairman of the Department of Philosophy at New York University, has written extensively on the question of whether members of the Communist Party should be disqualified from University faculties. He explains:

"Once in the Communist Party, as William Z. Foster points out, the teacher-member must do his best to rewrite the text-books in his field from the Communist Party point of view, win students and colleagues to this point of view, and mercilessly criticize opponents of Communist doctrine including his own past views. If a philosopher, to cite some actual instances, has accepted the theories of Mach or Carnap or Husserl or Alexander or T. H. Green or Whitehead or Dewey or G. E. Moore, upon joining the Communist Party he will criticize the philosophical doctrines he had previously held. He will never criticize the philosophy of dialectical materialism or the theories of Lenin and Stalin* whom he now regards as sacred philosophical authorities. If a physicist or mathematician becomes a member of the Communist Party he is required, wherever it is possible for him to do so, to relate his subject to the growth of technology, its impact upon social and class divisions, the class

*By party fiat, Stalin has since fallen from his exalted place.

uses to which the discovery is put, and the liberating role it can play in a Communist economy. The general theme is: science under capitalism makes for poverty, war and death; under communism, science makes for peace and abundance. Whatever his private beliefs may be, he cannot proclaim that there are any objective universal truths independent of country, class or even party, without running foul of the party line." (Hook, *Heresy, Yes, Conspiracy, No* (John Day Company, New York, 1953, pp. 202-203.)

CONCLUSION

It is not too much for the University to insist upon intellectual independence on the part of members of its faculty. Justice Frankfurter well expressed the great principle involved when he said in his concurring opinion in *Wieman v. Updegraff* (1952) 344 U.S. 183, 196, 97 L.Ed. 216, 225:

"The process of education has naturally enough been the basis of hope for the perdurance of our democracy on the part of all our great leaders, from Thomas Jefferson onwards.

"To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they

must be exemplars of open-mindedness and free inquiry. *They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them.* They must have the freedom of responsible inquiry, by thought and action, into the meaning of social and economic ideas, into the checkered history of social and economic dogma." (Emphasis added.)

It is precisely because members of the Communist Party have assumed commitments which preclude such "open-mindedness and free inquiry" that they are disqualified from serving on the University's faculty.

For the reasons set forth above, a writ of certiorari should issue to review the judgment in this case of the Court of Appeal, State of California, Second Appellate District, Division Three.

Dated, Berkeley, California,
June 5, 1972.

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DONALD L. REIDHAAR,
Counsel for Petitioner.

(Appendices Follow)

Appendix A

In the Court of Appeal
State of California
Second Appellate District

Division Three

2 Civil No. 38,410
(Superior Ct. No. 962388)

Kenneth L. Karst, David Kaplan, Douglas Glasgow, Webster Moore, and Harry Deutsch (Plaintiffs) and Angela Y. Davis (Plaintiff in Intervention),
Plaintiffs and Respondents,
vs.
The Regents of the University of California, a public corporation,
Defendant and Appellant.

OPINION

(Certified for nonpublication)

THE COURT:

The Regents of the University of California have appealed from a summary judgment in favor of the

plaintiff taxpayers and from a summary judgment in favor of the intervenor Angela Y. Davis.[1]

On October 3, 1969, the plaintiffs filed in the Superior Court of Los Angeles County a taxpayers' action against the Regents of the University of California. In the first cause of action the plaintiffs sought a declaratory judgment that certain resolutions of the Regents of October 11, 1940, June 24, 1949, and April 21, 1950, expressing the policy that any member of the Communist Party was barred from employment by the University of California, were invalid under the First and Fourteenth Amendments to the Constitution of the United States and that the expenditure of tax monies in the implementation of such resolutions constituted an impermissible use of public funds. It was alleged that a resolution had been adopted by the Regents on or about September 19, 1969, directing the president of the university to take steps to terminate the appointment as a faculty member at the university's Los Angeles campus of Angela Y. Davis who, in response to an inquiry by the university, had stated that she was then a member of the Communist Party; that termination proceedings with respect to Miss Davis were pending before a faculty Committtee on Privilege and Tenure on the Los Angeles campus; and that by "virtue of all of the foregoing, the University is now expending, and will continue to expend, tax monies in the implementation of the constitution-

[1]In *Regents of the University of California v. Superior Court*, 3 Cal.3d 529, the matter of venue for the action was determined.

ally invalid resolutions of October 11, 1940, June 24, 1949, and April 21, 1950."[2]

The second cause of action incorporated by reference all of the allegations of the first cause of action and contained further allegations as follows: "Defendant University is continuing and threatening, unless restrained, to continue to do the acts and things hereinbefore complained of. Said acts are causing, and, unless restrained, will continue to cause irreparable injury and damage to plaintiffs as taxpayers, in that said expenditures, once made, can never thereafter be recouped. Plaintiffs have no adequate remedy at law with respect to such injury and damage."

---

[2]The body of the resolution of June 24, 1949, was as follows:
"RESOLVED THAT
"At its birth the University was dedicated to the search for truth and its full exposition.
"The primary obligation of The Regents of the University of California has been to stand steadfastly for that freedom of the human mind and spirit which has enabled the assemblage of distinguished scholars constituting the faculty to continue to pursue these objectives.
"The Regents gladly share with the faculty the responsibility to keep the University free from those who would destroy this freedom.
"Today this freedom is menaced on a world-wide basis by the Communist Party through its determination by fraud, or otherwise, to establish control by the State over the thoughts and expression of thoughts by the individual.
"Therefore, the Regents reaffirm their declaration of policy adopted in 1940 that membership in the Communist Party is incompatible with objective teaching and with search for the truth.
"Pursuant to this policy the Regents direct that no member of the Communist Party shall be employed by the University.
"Any person who is or shall become a member of the Communist Party or otherwise undertakes obligations or advocates doctrines inconsistent with this policy shall, after the facts have been established by the University Administration, and after the traditional consultation with the Committee on Privilege and Tenure of the Academic Senate in cases of members of the faculty, be deemed to have severed his connection with the University."

On October 7, 1969, the plaintiffs filed a notice of a motion for a summary judgment to be heard on October 20, 1969. (Code Civ. Proc., § 437c.) The ground of the motion was stated to be that there was no defense to the action. With respect to the constitutional contention, reliance was placed on the reasoning of *Keyishian v. Board of Regents,* 385 U.S. 589, *Elfbrandt v. Russell,* 384 U.S. 11, and *Vogel v. County of Los Angeles,* 68 Cal.2d 18.

On October 9, 1969, pursuant to leave of the court, Angela Y. Davis filed a complaint in intervention. Therein she adopted by reference the major portion of the complaint theretofore filed. She alleged that there was no issue of fact before the Committee on Privilege and Tenure and the Regents with respect to the matter of the termination of her employment since she had admitted the only fact alleged in the statement of charges, namely, her membership in the Communist Party. She further alleged that the proceedings to terminate her employment were directed to the accomplishment of unconstitutional objects in that her constitutional rights, which she specified in detail, would thereby be violated. The intervenor further alleged: "By reason of the facts alleged herein Intervenor has an interest in the subject matter of the Complaint and Intervenor claims what is sought in said Complaint; any determination of said subject matter and said claims must directly and unavoidably affect Intervenor's interest in her employment, her right to teach, and her freedom of expression and association."

On October 10, 1969, the intervenor, having obtained an order shortening time for service, filed a notice of

motion for summary judgment to be heard on October 20, 1969, together with points and authorities and a declaration in support thereof.

On October 10, 1969, the Regents filed a general demurrer to each cause of action of the complaint. On that date the Regents also filed a declaration of their general counsel in opposition to the plaintiffs' motion for summary judgment. A similar declaration in opposition to the intervenor's motion for summary judgment was filed on October 17, 1969. The purpose of each declaration was to show that there were "at least" two triable issues of fact, those issues being stated to be as follows:

> "(1) Are all members of the Communist Party committed to accept and implement the Party line and dogma?
>
> (2) And, if so, are such commitments incompatible with serving as a faculty member of the University of California?"

On October 20, 1969, the demurrer of the Regents to the complaint was overruled and the motion of the plaintiffs for summary judgment was granted. The motion of the intervenor for summary judgment was submitted on October 20, 1969, and was granted on October 21, 1969.

The summary judgment in favor of the plaintiffs was entered on October 21, 1969. A portion thereof was as follows: "A. The resolutions of the defendant Regents of the University of California which are dated October 11, 1940, June 24, 1949, and April 21, 1950 (and which are annexed hereto and incorporated

herein by this reference as Exhibits A, B and C respectively) as well as the implementing resolutions of the defendant, in respect of Intervenor, Angela Y. Davis, dated September 19, 1969 and October 3, 1969 (which are annexed hereto and incorporated herein by this reference as Exhibits D and E respectively) are hereby declared to be in violation of Article I, Sections 9 and 10, of the California Constitution, and of the First and Fourteenth Amendments of the Constitution of the United States of America, because they automatically exclude from faculty employment by the University of California, solely by virtue of such membership, any person who is a member of the Communist Party. Accordingly, any and all expenditures of public funds with a purpose, "whether direct or indirect, of implementing any of defendant's said resolutions are hereby declared to be illegal."

The summary judgment in favor of the intervenor was entered on October 24, 1969. A portion of that judgment was substantially identical to the portion of the judgment in favor of the plaintiffs quoted hereinabove, except for the quoted part thereof relating to the expenditure of public funds.

At oral argument all parties agreed that Miss Davis was not reappointed for a second year. However, the appeal from the judgments presents a question of continuing importance, namely, the constitutional validity of the resolutions of the Regents of October 11, 1940, June 24, 1949, and April 21, 1950. Consequently, the appeal from the judgments should not be dismissed as moot. (See *DiGiorgio Fruit Corp. v. Dept. of Employment,* 56 Cal.2d 54, 58.)

It is manifest that the judgments are sustained by the reasoning of *Keyishian v. Board of Regents,* supra, 385 U.S. 589, *Elfbrandt v. Russell, supra,* 384 U.S. 11, and *Vogel v. County of Los Angeles, supra,* 68 Cal.2d 18. This court as an intermediate court of appellate review is bound by that reasoning. Consequently, a plenary discussion in this opinion of the arguments made on behalf of the Regents would serve no purpose.

The judgments are affirmed.

ALLPORT, J.—I dissent.

The issues raised by the complaint in intervention are conceded by all concerned to be moot. I would therefore dismiss the appeal from the summary judgment heretofore entered in favor of Angela Y. Davis.

I would reverse the summary judgment heretofore entered in favor of the "Taxpayers" Karst, Kaplan, Glasgow, Moore and Deutsch. The rules applicable to the summary judgment procedure are succinctly stated in *Snider v. Snider,* 200 Cal.App.2d 741, 747-748, as follows: "'Well-settled principles of law define the nature and purpose of the procedure set forth in section 437c of the Code of Civil Procedure, and guide us in our task of reviewing the sufficiency of the affidavits. It "provides a method by which, if the pleadings are not defective, the court may determine whether the triable issues apparently raised by them are real or merely the product of adept pleading." (*Coyne v. Krempels,* 36 Cal.2d 257, 262 [223 P.2d 244].) "While it is not a substitute for a regular trial and does not authorize the trial of any bona fide issues of fact which the affidavits may reveal, it permits the

court to pierce the allegations of the pleadings to ascertain whether a genuine cause of action exists. . . ." (*Cone v. Union Oil Co.*, 129 Cal.App.2d 558, 562 [277 P.2d 464].) As we stated in *Burke v. Hibernia Bank*, 186 Cal.App.2d 739, 744 [9 Cal.Rptr. 890]: "The summary judgment procedure seeks to discover, through the media of affidavits, whether the parties possess evidence which demands the analysis of trial." Witkin in his work on California Procedure (vol. 2, pp. 1711-1715) points out that the purpose of the procedure is to discover proof and thus challenge its sufficiency in support of the allegations of the pleadings. [¶] Equally well-settled principles guide us in our task of examining the sufficiency of the affidavits prescribed by the section. At the outset we recognize the admonition of the Supreme Court in *Eagle Oil & Ref. Co. v. Prentice*, 19 Cal.2d 553, 556 [122 P.2d 264]: "The procedure is drastic and should be used with caution in order that it may not become a substitute for existing methods in the determination of issues of fact." (See *Walsh v. Walsh, supra* [18 Cal.2d 439 (116 P.2d 62).] [¶] "For these reasons it may further be said that the affidavits of the moving party, the plaintiff in this case, should be strictly construed and those of his opponent, liberally construed." (See also *McComsey v. Leaf*, 36 Cal.App.2d 132 [97 P.2d 242]; *Nini v. Culberg*, 183 Cal.App.2d 657, 661 [7 Cal.Rptr. 146].) If, after an examination of the affidavits, doubt exists as to whether summary judgment should be granted, such doubt should be resolved against the moving party. (*Whaley v. Fowler*, 152 Cal.App.2d 379,

381 [313 P.2d 97]; *House v. Lala,* 180 Cal.App.2d 412, 415 [4 Cal.Rptr. 366]; *Travelers Indemnity Co. v. McIntosh,* 112 Cal.App.2d 177, 182 [245 P.2d 1065].) But, on the other hand, as we stated in *Burke v. Hibernia Bank, supra,* 186 Cal.App.2d at page 744: "a summary judgment will stand if the supporting affidavits state facts sufficient to sustain a judgment and the counteraffidavits do not proffer competent and sufficient evidence to present a triable issue of fact. (*Coyne v. Krempels* (1950) 36 Cal.2d 257, 261 [223 P.2d 244]; Code Civ. Proc., § 437c.)"'" While a summary judgment may, in some instances, be considered prior to the filing of an answer, *Snider v. Snider, supra,* 746-747, to do so accentuates the need for the use of caution when resorting to use of such a "drastic" procedure in effecting judgment. The existence of triable issues of fact may well have been raised in that responsive pleading itself. (*Fresno City High School Dist. v. Dillon,* 34 Cal.App.2d 636, 640-641.) In my opinion the "pleadings" in the case at bar, supplemented by the declaration filed on behalf of the Regents, presented triable issues of fact and that to grant a summary judgment herein was not only error but, to do so prior to answer, was an abuse of discretion on the part of the trial court.

Article III, section 3, of the Constitution of the United States defines treason as ". . . adhering to their Enemies, giving them Aid and Comfort." A plenary examination of the communist dogma, its objectives and the conduct of a Communist Party member in connection therewith while on the teaching faculty of

the University pose potentially valid constitutional grounds for the exclusion of such a person from such a position. Additional descriptive language need not attach to the Communist Party designation in the resolutions themselves to raise triable issues of fact. I am unable to subscribe to the view that the resolutions herein were, as a matter of law, violative of the California or United States Constitutions. The position which the majority feels compelled to take herein suggests the need for an immediate reevaluation of the subject in the light of current events, the constitutional provision referred to herein, the cases of *Adler v. Board of Education of the City of New York,* 342 U.S. 485 [96 L.Ed. 517, 72 S.Ct. 380]; *Pockman v. Leonard,* 39 Cal.2d 676, and the reasoning of the minority in *Keyishian, Elfbrandt* and *Vogel.* The desirability of such was given impetus by Mr. Justice Clark in his dissenting opinion in *Keyishian v. Board of Regents of New York,* 385 U.S. 589 [17 L.Ed.2d 629, 87 S.Ct. 675], concurred in by Justices Harlan, Stewart and White, wherein he said at pages 620-621: "The blunderbus fashion in which the majority couches 'its artillery of words,' together with the morass of cases it cites as authority and the obscurity of their application to the question at hand, makes it difficult to grasp the true thrust of its decision."

Filed January 26, 1972.

Clay Robbins, Jr., Clerk.

Appendix B

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Telephone: 879-2600
Attorneys for Plaintiffs

Superior Court of the State of California
for the County of Los Angeles

No. 962 388

Kenneth L. Karst, David Kaplan, Douglas Glasgow, Webster Moore, and Harry Deutsch,
Plaintiffs,
vs.
Regents of the University of California, a corporation,
Defendant.

[Oct. 21, 1969]

SUMMARY JUDGMENT
pursuant to Section 437c of the Code of Civil Procedure

This cause having come on regularly to be heard in Department 59 of the above-entitled Court, the Hon. Jerry Pacht, Judge presiding, on October 20, 1969, pursuant to duly noticed motion for summary

judgment, Charles H. Phillips and Richard H. Borow appearing for the moving parties, and Donald L. Reidhaar, Warren S. Levin, and William H. McKenzie appearing for the responding party, and John T. McTernan appearing for the intervenor; and the Court having considered the pleadings, the documents presented and filed with respect to the motion and particularly the affidavits or declarations, and having heard and considered the contentions of counsel; and the Court having heretofore granted the said motion on the statutory ground that there is no defense to the action and that no triable issue of fact is presented:

It is Ordered, Adjudged, and Decreed, that:

A. The resolutions of the defendant Regents of the University of California which are dated October 11, 1940, June 24, 1949, and April 21, 1950 (and which are annexed hereto and incorporated herein by this reference as Exhibits A, B and C respectively) as well as the implementing resolutions of the defendant, in respect of Intervenor, Angela Y. Davis, dated September 19, 1969 and October 3, 1969 (which are annexed hereto and incorporated herein by this reference as Exhibits D and E respectively) are hereby declared to be in violation of Article I, Sections 9 and 10, of the California Constitution, and of the First and Fourteenth Amendments of the Constitution of the United States of America, because they automatically exclude from faculty employment by the University of California, solely by virtue of such membership, any person who is a member of the Communist Party.

Accordingly, any and all expenditures of public funds with a purpose, whether direct or indirect, of implementing any of defendant's said resolutions are hereby declared to be illegal.

B. The additional illegal expenditure of public funds will continue to cause irreparable injury and damage to plaintiffs as taxpayers for which they have no adequate remedy at law. Accordingly, defendant, its agents, servants, representatives and employees, and all persons acting in concert or participation with it, and all those who shall have actual knowledge of this Decree, shall be, and they hereby are, permanently enjoined and restrained from, in any manner and by any means, whether direct or indirect, expending or utilizing public funds, public materials and equipment, and the time and energies of paid public employees for the purpose of implementing the said resolutions of The Regents of the University of California dated October 11, 1940, June 24, 1949, April 21, 1950, September 19, 1969, and October 3, 1969, annexed hereto.

C. This order shall not be construed to apply to defendant, its attorneys, agents, servants, representatives or employees in taking or maintaining legal action seeking resolution of the matters involved in this litigation.

D. Plaintiffs recover of defendant their costs of suit herein in the sum of $33.50.

Dated, October 21, 1969.

Jerry Pacht,
Judge of the Superior Court.

Exhibit A

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That:

The Regents believe that the Communist Party . . . gives its first loyalty to a foreign political movement and, perhaps, to a foreign government; that by taking advantage of the idealism and inexperience of youth, and by exploiting the distress of underprivileged groups, it breeds suspicion and discord, and thus divides the democratic forces upon which the welfare of our country depends. They believe, therefore, that membership in the Communist Party is incompatible with membership in the faculty of a State University. Tolerance must not mean indifference to practices which contradict the spirit and the purposes of the way of life to which the University of California as an instrument of democracy is committed.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of the The Regents of the University of California, a corporation, adopted at a duly called meeting thereof on October 11, 1940, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolu-

tion; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman,

Secretary of
The Regents of the University
of California

Exhibit B

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

At its birth the University was dedicated to the search for truth and its full exposition.

The primary obligation of The Regents of the University of California has been to stand steadfastly for that freedom of the human mind and spirit which has enabled the assemblage of distinguished scholars constituting the faculty to continue to pursue these objectives.

The Regents gladly share with the faculty the responsibility to keep the University free from those who would destroy this freedom.

Today this freedom is menaced on a world-wide basis by the Communist Party through its determination by fraud, or otherwise, to establish control by the State over the thoughts and expression of thoughts by the individual.

Therefore, the Regents reaffirm their declaration of policy adopted in 1940 that membership in the Communist Party is incompatible with objective teaching and with search for the truth.

Pursuant to this policy the Regents direct that no member of the Communist Party shall be employed by the University.

Any person who is or shall become a member of the Communist Party or otherwise undertakes obligations or advocates doctrines inconsistent with this policy shall, after the facts have been established by the University Administration, and after the traditional consultation with the Committee on Privilege and Tenure of the Academic Senate in cases of members of the faculty, be deemed to have severed his connection with the University.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of The Regents of the University of California, a corporation, adopted at a duly called meeting thereof on June 24, 1949, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman,

Secretary of
The Regents of the University
of California.

Exhibit C

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

The Regents of the University of California confirm and emphasize their policy designed to bar members of the Communist Party from employment by the University as members of the faculty or otherwise, as embodied in various statements and resolutions including those of October 11, 1940 and June 24, 1949, which policy is hereby reaffirmed. The Regents are gratified that the Academic Senate, both Northern and Southern sections, has concurred in this policy by an overwhelming vote, reported on March 22, 1950.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of The Regents of the University of California, a corporation, adopted at a duly called meeting thereof on April 21, 1950, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman,

Secretary of
The Regents of the University
of California.

Exhibit D

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

Whereas, on October 11, 1940, The Regents adopted a Resolution stating that "membership in the Communist Party is incompatible with membership in the faculty of a State University"; and

Whereas, on June 24, 1949, The Regents reaffirmed and amplified that policy with a Resolution stating, in part, "pursuant to this policy, The Regents direct that no member of the Communist Party shall be employed by the University"; and

Whereas, in an action reported March 22, 1950, the Academic Senate, Northern and Southern Sections, concurred in the foregoing policy by adopting a resolution that proved members of the Communist Party are not acceptable as members of the faculty; and

Whereas, on April 21, 1950, The Regents adopted a Resolution confirming and emphasizing their policy statements of October 11, 1940, and June 24, 1949; and

Whereas, it has been reported to The Regents that Angela Y. Davis was recently appointed as a member of the University faculty, and subsequently she informed the University Administration by letter, stating, among other things, that she is a member of the Communist Party;

Now, Therefore, The Regents direct the President to take steps to terminate Miss Davis' University appointment in accordance with regular procedures as prescribed in the Standing Orders of The Regents.

This Is To Certify that the foregoing is a full, true, and correct copy of a resolution of The Regents of The University of California, a corporation, adopted at a duly called meeting thereof on September 19, 1969, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman,

Secretary of
The Regents of the University
of California.

Exhibit E

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

Whereas, as stated in policies of The Regents "membership in the Communist Party is incompatible with membership in the faculty of a State University; and

Whereas, The Regents at their meeting of September 19, 1969, after being advised that Acting Assistant Professor Angela Y. Davis had acknowledged membership in the Communist Party, directed the President to take steps to terminate Miss Davis' University appointment in accordance with regular procedures as prescribed in the Standing Orders of The Regents; and

Whereas, The Regents were informed at the time of taking that action that Miss Davis would not be engaged in teaching during the Fall Quarter and therefore took no action to specifically prohibit teaching activity; and

Whereas, subsequent to The Regents meeting of September 19, 1969, it was announced that Miss Davis has been assigned to teach a University course during the Fall quarter commencing October 6, 1969; and

Whereas, there may be some delay before the conclusion of hearing procedures relating to Miss Davis; and

Whereas, in the interim it is deemed appropriate and desirable that Miss Davis not engage in teaching activities as was The Regents' intention at the time of their September 19 action; and

Whereas, The Regents do not wish Miss Davis to suffer financial hardship pending the outcome of University hearing procedures;

Now, Therefore, Be it Resolved, that The Regents instruct the President that during the Fall quarter of 1969 Miss Davis shall be assigned no teaching duties, and that she shall not be authorized to give instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by The Regents.

Be It Further Resolved, that during the period of appropriate University hearing procedures she shall continue to be compensated as provided in her employment contract.

This Is To Certify that the foregoing is a full, true, and correct copy of a resolution of The Regents of the University of California, a corporation, adopted at a duly called meeting thereof on October 3, 1969, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman,

Secretary of
The Regents of the University
of California.

Appendix C

Margolis and McTernan
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DUnkirk 5-6111
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Superior Court of the State of California
For the County of Los Angeles

No. 962 388

Kenneth L. Karst, David Kaplan, Douglas Glasgow, Webster Moore, and Harry Deutsch,
Plaintiffs,

vs.

Regents of the University of California, a corporation,
Defendant.

Angela Y. Davis,
Intervenor.

(October 24, 1969)

SUMMARY JUDGMENT

Pursuant To Section 437c of the
Code of Civil Procedure

This cause having come on regularly to be heard in Department 59 of the above entitled court, the Honorable Jerry Pacht, Judge presiding, on October 20,

1969, pursuant to duly noticed Motion for Summary Judgment by Intervenor, John T. McTernan, Esq., appearing for Intervenor, Charles H. Phillips, Esq. and Richard H. Borow, Esq., appearing for Plaintiffs, and Thomas J. Cunningham, Esq., General Counsel of The Regents of the University of California by Donald L. Reidhaar, Esq., Warren S. Levin, Esq., and William H. McKenzie, Esq., appearing for the Defendant; and the Court having considered the pleadings and the declarations presented and filed with respect to the motion, and having heard and considered the contentions of counsel; and the Court having granted the said Motion for Summary Judgment on the statutory ground that there is no defense to the action and that no triable issue of fact is presented:

It Is Ordered, Adjudged and Decreed That:

A. The resolutions of the defendant Regents of the University of California which are dated October 11, 1940, June 24, 1949, and April 21, 1950 (and which are annexed hereto and incorporated herein by this reference as Exhibits A, B and C respectively) as well as the resolutions of the defendant, in respect of Intervenor, Angela Y. Davis, dated September 19, 1969 and October 3, 1969 (which are annexed hereto and incorporated herein by this reference as Exhibits D and E respectively) are hereby declared to be in violation of the First and Fourteenth Amendments of the Constitution of the United States of America and of Article I, Sections 9, 10, 11 and 13 of the Constitution of the State of California, because they automatically exclude from faculty employment by the University

of California, solely by virtue of such membership, any person who is a member of the Communist Party; and all proceedings to terminate Intervenor's University appointment for cause under Standing Order No. 102.2(j) of defendant Regents of the University of California, and all matters, transactions and things done, undertaken, or caused to be done or undertaken, to abridge, interfere with, restrain or obstruct Intervenor's engaging in teaching duties pursuant to her University appointment, or being authorized to give instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by defendant Regents of the University of California, or in all respects exercising, using and enjoying the rights, privileges and powers of Intervenor's appointment, solely on the grounds of Intervenor's membership in the Communist Party, or by way of effectuation of said Resolutions, or any of them, are hereby declared to be in violation of the aforesaid provisions of the Constitutions of the United States of America and the State of California.

B. The proceedings to terminate Intervenor's University appointment, and the termination of said appointment, and any interference with, abridgement, restraint or obstruction of her authorization to give instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by the defendant Regents of the University of California, and of the rights, privileges and powers of Intervenor's University appointment, solely on the grounds of Intervenor's membership in the Communist

Party, will continue to cause irreparable injury and damage to Intervenor for which she has no adequate remedy at law. Accordingly, defendant, its agents, servants, representatives and employees, and all persons acting in concert or participation with it, and all those who shall have actual knowledge of this Decree, shall be, and they hereby are, permanently enjoined and restrained from, in any manner and by any means, whether direct or indirect, for reasons based solely upon Intervenor's membership in the Communist Party, or upon the implementation or effectuation of said Resolutions of the Regents of the University of California dated October 7, 1940, June 24, 1949, April 21, 1950, September 19, 1969, and October 3, 1969, annexed hereto,

(1) Terminating Intervenor's University appointment aforesaid, or causing or bringing about the termination thereof;

(2) Interfering with, abridging, restraining or obstructing Intervenor in undertaking, performing or engaging in teaching duties pursuant to her University appointment, in giving instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by the defendant, and in all respects exercising, using and enjoying all the rights, privileges and powers of her University appointment.

C. This Order shall not be construed to apply to defendant, its attorneys, agents, servants, representa-

tives or employees in taking or maintaining legal action seeking resolution of the matters involved in this litigation.

D. Intervenor shall recover of defendant her costs of suit herein in the sum of $17.50.

Dated, October 24, 1969.

Jerry Pacht,

Judge of the Superior Court.

Exhibit A

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That:

The Regents believe that the Communist Party . . . gives its first loyalty to a foreign political movement and, perhaps, to a foreign government; that by taking advantage of the idealism and inexperience of youth, and by exploiting the distress of underprivileged groups, its breeds suspicion and discord, and thus divides the democratic forces upon which the welfare of our country depends. They believe, therefore, that membership in the Communist Party is incompatible with membership in the faculty of a State University. Tolerance must not mean indifference to practices which contradict the spirit and the purposes of the way of life to which the University of California as an instrument of democracy is committed.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of The Regents Of The University Of California, a corporation, adopted at a duly called meeting thereof on October 11, 1940, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolu-

tion; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman
Secretary of
The Regents of the University
of California

Exhibit B

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

At its birth the University was dedicated to the search for truth and its full exposition.

The primary obligation of The Regents of the University of California has been to stand steadfastly for that freedom of the human mind and spirit which has enabled the assemblage of distinguished scholars constituting the faculty to continue to pursue these objectives.

The Regents gladly share with the faculty the responsibility to keep the University free from those who would destroy this freedom.

Today this freedom is menaced on a world-wide basis by the Communist Party through its determination by fraud, or otherwise, to establish control by the State over the thoughts and expression of thoughts by the individual.

Therefore, the Regents reaffirm their declaration of policy adopted in 1940 that membership in the Communist Party is incompatible with objective teaching and with search for the truth.

Pursuant to this policy the Regents direct that no member of the Communist Party shall be employed by the University.

Any person who is or shall become a member of the Communist Party or otherwise undertakes obligations or advocates doctrines inconsistent with this policy shall, after the facts have been established by the University Administration, and after the traditional consultation with the Committee on Privilege and Tenure of the Academic Senate in cases of members of the faculty, be deemed to have severed his connection with the University.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of The Regents Of The University Of California, a corporation, adopted at a duly called meeting thereof on June 24, 1949, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman
Secretary of
The Regents of the University
of California

Exhibit C

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

The Regents of the University of California confirm and emphasize their policy designed to bar members of the Communist Party from employment by the University as members of the faculty or otherwise, as embodied in various statements and resolutions including those of October 11, 1940 and June 24, 1949, which policy is hereby reaffirmed. The Regents are gratified that the Academic Senate, both Northern and Southern sections, has concurred in this policy by an overwhelming vote, reported on March 22, 1950.

This Is To Certify that the foregoing is a full, true, and correct copy of the relevant portion of a resolution of The Regents Of The University Of California, a corporation, adopted at a duly called meeting thereof on April 21, 1950, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman
Secretary of
The Regents of the University
of California

Exhibit D

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

Whereas, on October 11, 1940, The Regents adopted a Resolution stating that "membership in the Communist Party is incompatible with membership in the faculty of a State University"; and

Whereas, on June 24, 1949, The Regents reaffirmed and amplified that policy with a Resolution stating, in part, "pursuant to this policy, The Regents direct that no member of the Communist Party shall be employed by the University"; and

Whereas, in an action reported March 22, 1950, the Academic Senate, Northern and Southern Sections, concurred in the foregoing policy by adopting a resolution that proved members of the Communist Party are not acceptable as members of the faculty; and

Whereas, on April 21, 1950, The Regents adopted a Resolution confirming and emphasizing their policy statements of October 11, 1940, and June 24, 1949; and

Whereas, it has been reported to the Regents that Angela Y. Davis was recently appointed as a member of the University faculty, and subsequently she informed the University Administration by letter, stating, among other things, that she is a member of the Communist Party;

Now, Therefore, The Regents direct the President to take steps to terminate Miss Davis' University appointment in accordance with regular procedures as prescribed in the Standing Orders of The Regents.

This Is To Certify that the foregoing is a full, true, and correct copy of a resolution of The Regents Of The University Of California, a corporation, adopted at a duly called meeting thereof on September 19, 1969, at which a quorum of said Regents was present and acting; that a majority of the Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman
Secretary of
The Regents of the University
of California

Exhibit E

RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Resolved That

Whereas, as stated in policies of The Regents "membership in the Communist Party is incompatible with membership in the faculty of a State University"; and

Whereas, The Regents at their meeting of September 19, 1969, after being advised that Acting Assistant Professor Angela Y. Davis had acknowledged membership in the Communist Party, directed the President to take steps to terminate Miss Davis' University appointment in accordance with regular procedures as prescribed in the Standing Orders of The Regents; and

Whereas, The Regents were informed at the time of taking that action that Miss Davis would not be engaged in teaching during the Fall quarter and therefore took no action to specifically prohibit teaching activity; and

Whereas, subsequent to The Regents meeting of September 19, 1969, it was announced that Miss Davis has been assigned to teach a University course during the Fall quarter commencing October 6, 1969; and

Whereas, there may be some delay before the conclusion of hearing procedures relating to Miss Davis; and

Whereas, in the interim it is deemed appropriate and desirable that Miss Davis not engage in teaching

activities as was The Regents' intention at the time of their September 19 action; and

Whereas, The Regents do not wish Miss Davis to suffer financial hardship pending the outcome of University hearing procedures;

Now, Therefore, Be It Resolved, that The Regents instruct the President that during the Fall quarter of 1969 Miss Davis shall be assigned no teaching duties, and that she shall not be authorized to give instruction in any course under the jurisdiction of any school, college, department or other academic agency approved by The Regents.

Be It Further Resolved, that during the period of appropriate University hearing procedures she shall continued to be compensated as provided in her employment contract.

This Is To Certify that the foregoing is a full, true, and correct copy of a resolution of The Regents Of The University Of California, a corporation, adopted at a duly called meeting thereof on October 3, 1969, at which a quorum of said Regents was present and acting; that a majority of The Regents present voted in favor of said resolution; and that the said resolution has not been annulled or revoked, but is still in full force and effect.

Dated this 10th day of October, 1969.

(Seal)

/s/ Marjorie J. Woolman
Secretary of
The Regents of the University
of California